



# DEPARTMENT OF FINANCE & PERSONNEL

Equal Opportunities Unit

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Your reference

Mr D McCartney  
Solicitor's Department  
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Our reference

Date 19 December 1991

Dear Mr McCartney

## THE FIRST DISCRIMINATION RULING BY FAIR EMPLOYMENT TRIBUNAL: EQUAL OPPORTUNITIES COMPOSITION OF INTERVIEW PANELS

The EOU has received a recent Press Release by the FEC which gives an account of the recent decision by the Fair Employment Tribunal (FET) that the Eastern Health and Social Services Board had unlawfully discriminated on religious grounds against a Roman Catholic laundry worker by failing to appoint her to a permanent position.

In order to alert NICS Departments to the Equal Opportunities issues arising from the case, EOU proposes to write to Departments advising them that as an affirmative action measure they should, as a formal matter of policy, seek to ensure that, wherever possible, interview panels have representatives from both sections of the community.

Copies of the FEC Press Release and draft Dear Establishment Officer letter are attached.

I would be grateful for your views on the proposed advice to Departments as a result of the implications from the FET ruling.

Yours sincerely

EOU-3325-WC.CS

DRAFT

TO ALL ESTABLISHMENT OFFICERS

December 1991

Dear Establishment Officer

**FIRST DISCRIMINATION RULING BY FAIR EMPLOYMENT TRIBUNAL: EQUAL OPPORTUNITIES  
COMPOSITION OF INTERVIEW PANELS**

I enclose a copy of a recent FEC press release which gives an account of the recent decision by the Fair Employment Tribunal (FET), that the Eastern Health and Social Services Board had unlawfully discriminated on religious grounds against a Roman Catholic laundry worker by failing to appoint her to a permanent position. At the conclusion of the Press Release, Ms Connolly, Director of the FEC Complaints Department cites a number of issues arising from the ruling which she describes as "central to an attack on discrimination and inequality".

This FET ruling provides an insight into factors which a Tribunal may take into account in their consideration of a case and it is important that Departments should be alive to these issues. The ruling further underscores the importance of individual staff being aware of their responsibilities in equal opportunities terms and of the relevance of these in practice. It also underlines the continuing validity of CSC 41/88 (ICSC 14/88) entitled 'Unacceptable Behaviour of a Sexual or Divisive Nature in the Workplace'.

The ruling also makes it quite clear that denying knowledge of an individual's religion is not always a credible stance to adopt. In the context of NICS it is the case that Departments, personnel staff and interviewers do not have access to religious monitoring information, however, in the light of the FET decision it is clearly unrealistic for a Department, personnel staff or interviewers to consistently claim no knowledge of an individual's religion. This is particularly the case where other information, for example surname or forenames which are available to personnel staff etc could clearly give a strong indication of an individual's religion.

For some time now it has been the formal policy of the Service to seek, wherever practical, to ensure that there is a gender balance in interview panels. Departments are now advised that as an affirmative action measure they should, as a formal matter of policy, seek to ensure wherever possible that interview panels have representatives from both sections of the community.



Yours sincerely

D SMITH  
Equal Opportunities Unit



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# Press Release

Contact: Rosemary Connolly, Director - Complaints

Embargo: Midnight 21st November 1991

## FIRST DISCRIMINATION RULING BY FAIR EMPLOYMENT TRIBUNAL

The full text of the decision of the Fair Employment Tribunal for Northern Ireland that the Eastern Health and Social Services Board had unlawfully discriminated on religious grounds against a Catholic laundry worker by failing to appoint her to a permanent position, became available today and was warmly welcomed by the Fair Employment Commission for Northern Ireland which had supported the case.

The unanimous decision of the Fair Employment Tribunal was that the applicant had been unlawfully discriminated against.

The Tribunal recorded that the officers of the EHSSB who appeared and gave evidence appeared to know of the existence of the Board's Equal Opportunities Policy but that none of them were acquainted with the contents of that policy and none of them appeared in the least disturbed by that fact.

It further recorded that the undisputed evidence of the applicant was that party tunes were played in the laundry, the Union flag was displayed within the laundry, pictures of the Royal Family were displayed and one supervisor displayed a photograph of herself and the leader of a political party in Ulster, but that the EHSSB informed them that the Board did not have a policy on such matters as flags and had no reason to think offence would be taken to the Union flag.

NEWS LETTER



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The Tribunal described the Respondent's evidence as "contradictory and fundamentally so".

They said that everyone agreed that the applicant was in general terms more qualified than any other applicant. They had no doubt at all on the evidence that she was more intelligent and quicker on the uptake than at least one of the successful candidates. He was a Protestant and she was a Roman Catholic. He got the job and she did not, which a member of the Respondent's appointment panel considered extraordinary. The Tribunal pronounced themselves satisfied that the applicant had established an act of discrimination calling for an explanation. The one advanced by the Respondent they found not acceptable.

The Tribunal cited the following reasons for concluding that the EHSSB had unlawfully discriminated -

- (a) The Respondent's witnesses had not merely contradicted themselves but each other in their testimony as to the conduct of these interviews.
- (b) Two witnesses for the Respondent who had participated in the interviews, the Tribunal believed, had lied to the Tribunal and in such a way as not only to make the Tribunal question their account but their motives for lying. The account which one gave as to her knowledge of the applicant's religion and her complaint had stretched credulity beyond breaking point. It was immediately contradicted and without hesitation by another witness. Likewise a further witness, told the Tribunal that the panel chairman made notes at the interviews which were not revealed. The chairman of the panel had denied doing so.
- (c) After the applicant did complain to the Fair Employment Tribunal, it would seem that -
  - (a) her temporary post continued, and
  - (b) she was again interviewed for a permanent post. On the balance of probabilities the Tribunal believed that she was the only person interviewed.

The Tribunal pronounced itself "amazed" that two officers against whom

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a complaint of unlawful discrimination had been made, would feel free to conduct further interviews with that person pending the resolution of that complaint. The Tribunal said that this did not accord with the Respondent's instruction that "line managers must be seen to be impartial in all their dealings with their staff". Nor did it accord with the Policy of the Respondent Board that staff who make a complaint in respect of alleged discrimination should be protected against victimisation.

- (d) Interviews were scored on a different basis by different members of the interview panel.
- (e) The respondent's evidence as to how successful candidates performed at interview amounted to little more than feeble assertion time after time that the applicant did not answer well. There were really no records to substantiate such claims beyond a record of numerical markings which the interviewing panel could not substantiate in any realistic fashion. Furthermore, the Tribunal believed that records of these interviews were destroyed in "an unofficial manner".
- (f) the Tribunal said that it was a rare event for an interview panel to be so easily and instantly dismissive of the concerns of a professional from personnel in relation to the non-appointment of a candidate whom the panel believed to be more qualified, experienced and able than a successful candidate. When the reason for that dismissal is totally unsupported by objective evidence of any sort it has to be noted that -
  - (i) the interview panel must then have been aware of the possibility of complaint;
  - (ii) nevertheless, no notes were made as to the relative performances which could have refreshed memories at a later date; and
  - (iii) notes which had been taken were destroyed;
- (g) Whilst it is not in any sense conclusive, regard can nevertheless be paid to -



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- (i) the disproportionate numbers of Protestant candidates successful at shortlisting and interview compared to Roman Catholic candidates;
- (ii) the balance of the workforce in the laundry;
- (iii) the fact that local management, whose responsibility it appeared to be, had totally ignored the Code of Practice where it suggested a neutral workplace;
- (iv) whatever may be said about the effects of Union flag or indeed pictures of the Royal Family in the workplace in Northern Ireland, the fact that local management permitted the playing of party tunes in the laundry at Purdysburn;
- (v) the fact that local management saw fit to hide their knowledge of the applicant's religion and their appreciation of what constitutes in Northern Ireland 'a party tune';
- (vi) the fact that local management ignored the Equal Opportunities guide where it states that criteria for recruitment and tests for selection should be formulated and examined to ensure that they are related to job performance. The panel acted upon the most subjective of criteria in appointing ie interview performance as assessed by the panel on questions such as why have you applied for the post of laundry worker?/What is the most difficult job you ever had to do?/What job have you most enjoyed and why?
- (vii) the fact that local management ignored an essential requirement of the Equal Opportunities Policy that all those with managerial and supervisory responsibilities perform their duties with full knowledge of the implications of the equal opportunities legislation.

The Tribunal said that it did not find it necessary to go much further on the evidence which it heard. It was the policy of the Eastern Health and Social Services Board, as set out at the commencement of their explanatory paper on Equal Opportunities, that all eligible persons should have equality of

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opportunity for employment and advancement on the basis of their ability, qualifications and aptitude for the work. The Tribunal said that the Board's policy was manifestly breached in the non-appointment of the applicant and that it was their unanimous view that responsibility for that breach did not simply lie with those who interviewed, although responsibility they did have and they had failed in that responsibility. The Tribunal said they had no doubt that the interviewing panel was fully aware that the applicant was more able, better qualified and possessed a superior aptitude than at least one of the successful candidates. Even if the respondent's panel were being truthful in what they said, their non-appointment of the applicant was, on the basis of criteria which, contrary to the Board's own policy, were not job related. But the Tribunal was not satisfied, and nowhere near being satisfied, that the respondent had proved that the applicant performed badly on the day in comparison to the successful candidates. The Tribunal had either to take their word for that assertion or reject it. They said they had already commented upon the quality of the evidence which emanated from this panel. Each contradicted himself or herself and indeed each other. The Tribunal could not rely upon their evidence unless it was in some way 'objectively' supported. There was no such support. On the other hand the Tribunal found the evidence of the applicant credible.

The Tribunal said it was in no doubt that neither qualifications nor experience were necessary for this post. It was not saying that criteria for appointment must include qualifications and experience every time and at every stage, but in this case an applicant whom the Tribunal believed, and the selection panel believed, to be better qualified, more experienced and more intelligent than at least one successful applicant, was rejected for the most subjective of reasons.

These reasons could not be tested but the evidence of those who suggested such reasons, was suspect and in circumstances where their other actions also support an inference as to unlawful discrimination on the grounds of religious belief.

The Tribunal went on to say that in any proceedings under the Fair Employment (NI) Acts, if any provision of that Code appeared to the Tribunal to be relevant to any question arising in the proceedings the Tribunal had to take those provisions into account in determining that question. The respondent, in accordance with para 5.1.1 'should have a written policy on equality of opportunity in employment and put it into effective and visible practice'. In para 5.2.1 the employer is encouraged to check that he is carrying out the steps mentioned in the code even if he regards his concern as an entirely fair



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employer for discrimination and inequality of opportunity can occur in the absence of regular scrutiny and the adoption of sound practices. In 5.2.2 the employer is encouraged to provide training and guidance for persons in key decision making areas and for personnel reception and supervisory staff to ensure that they understand their position in law and company policy and practice for the whole environment within the firm should reflect good practice.

And in 5.2.2 the employer is told to promote a good and harmonious working environment and atmosphere in which no worker feels under threat or intimidated because of his or her religious belief or political opinion. He should prohibit the display of flags, emblems, posters, graffiti or the circulation of materials, or the deliberate articulation of slogans or songs which are likely to give offence or cause apprehension among particular groups of employees. Paragraph 5.3.1 outlines two core components of good practice for employers being:-

- (a) systematic and objective recruitment; and
- (b) sound selection and promotion arrangements.

Paragraph 5.3.6 indicates that selection procedures should operate so as to ensure that the best person for the job is appointed. The Tribunal said that the system adopted by the respondent fell short of what is required. In not appointing the applicant the best person had not been appointed on at least one occasion.

In light of the Code of Practice recommendations and the evidence which it heard, the Tribunal said that it found the evidence of the respondent's witnesses disturbing. The Tribunal said it was not enough to have equal opportunities policies - they must be put into effective practice. The Tribunal wondered why and how the employee relation manager was happy to allow 2 members of the original interview panel to re-interview the applicant in light of her complaint. They said there were manifest failings by local management. Indeed there were manifest failings by senior management. The Tribunal said that it could not understand how such a decision could be made. It acknowledged that it was easy to understand that in a workforce of 32,000 employees, mistakes would be made and they understood that this is so. But this case had never been approached on this basis and decisions and actions were largely defended from start to finish. The Tribunal said that Equal Opportunities Officers would be aware of the effects which this must have upon minorities in the workplace - but

they saw little appreciation from the respondent of the effect which their actions could have had upon the applicant. In particular, the applicant was the only temporary employee to fail to get an appointment. Someone who did not measure up to her in qualifications, experience, aptitude and intelligence, was given an appointment and the applicant continued to work with her former colleagues with this knowledge. The Tribunal concluded that these were obviously matters which the respondent needed to address urgently.



Rosemary Connolly, Director of the Commission's Complaints Department warmly welcomed the Tribunal ruling. She said that it was significant in that it was made against the single largest employer in Northern Ireland and also that it encapsulated a number of extremely important issues central to an attack on discrimination and inequality;

- (i) the mere fact of having an equal opportunities policy is insufficient. Effective implementation is required;
- (ii) the requirement on employers to maintain a neutral working environment and to ensure that the sensitivities of all employees are appreciated and protected;
- (iii) the responsibility on management to take whatever action is necessary to ensure compliance with the proper standards of practice as laid down in the Fair Employment Code of Practice;
- (iv) the rejection of the pretence often raised that the alleged discriminator was unaware of the victim's religious beliefs. In the Commission's view such a pretence is often a cloak for discriminatory practice.
- (v) the need for employers to ensure that job requirements are neither directly nor indirectly discriminatory and that they can be shown to be job related;
- (vi) the importance of ensuring that no-one is victimised in any way on account of having brought or otherwise been involved in a complaint of this nature;
- (vii) the importance of retaining records of interview panels and all those involved in recruitment exercises.

Ms Connolly concluded by praising the courage of the applicant for initiating and pursuing her complaint, a decision which had now been thoroughly vindicated.